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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,225	05/09/2001	Mitsuru Akaike	M1596-226	4231
7278	7590	05/20/2004	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			MORRISON, NASCHICA SANDERS	
		ART UNIT	PAPER NUMBER	
		3632		

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/852,225	AKAIKE, MITSURU	
	Examiner	Art Unit	
	Naschica S Morrison	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 2/17/04.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s). 51204

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

This is the fourth Office Action for serial number 09/852,225, Stopper Device and Telescopic Unit, filed on May 9, 2001. Claims 1-12 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art of Figs. 5, 6, and 11 (APA) in view of U.S. Patent 2,282,295 to Olson and further in view of DE 3441225 to Grouschupp. With regards to claims 1-12, APA discloses all of the limitations of the claims except the stoppers (2) each having a first diameter at the first end being greater than a second diameter of the second end (i.e. tapered) and forming a continuously tapered shape, and the first and second ends of abutting stoppers having substantially the same outer dimensions or diameter. Olson teaches a tripod leg assembly including a stopper (36) having a tapered shape with a diameter gradually increasing from the second end (adjacent 40) to the first end (adjacent 37). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the stoppers (2) of APA to taper from top to bottom since providing a tapered stopper was well known in the art as taught by Olson and since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Grouschupp teaches a tripod leg assembly (fig. 1) including a plurality of

stacked stoppers (20, 25, 30) having the same outer dimensions (i.e. width and length). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second ends of the abutting stoppers of APA to have substantially the same outer dimensions and/or diameter as disclosed and inherently taught by Grouschupp to enhance the appearance of the device and further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Response to Arguments

Applicant's arguments filed 2/17/04 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually (i.e. Applicant argues that Grouschupp does not teach or provide motivation to form a series of stoppers with a continuously tapering outer surface and that Grouschupp does not teach forming the series of stoppers with one end having a larger outer dimension than the outer dimension of an opposite end), one cannot show nonobviousness by attacking references individually where the rejections are based on *combinations* of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Additionally, applicant argues "it is not obvious to form a series of *tapered* stoppers... as recited in claims 1 and 8" and "it is not obvious to form a series of *tapered*

stoppers *which are made individually with different outer dimensions...*"; however it is noted that the "tapered" and "individually made with different outer dimensions" features are not recited in claims 1 and 8. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. D290963 to Groschupp discloses a tripod.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703)

305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
5/12/04


Leslie A. Braun
SUPERVISORY PATENT EXAMINER